IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 112 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHASHWAT EXPORTS

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 112 of 2002

MR TS NANAVATI for Petitioners No. 1-2

MR BD DESAI, APP for Respondent No. 1

MR SV RAJU, for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 22/03/2002

ORAL JUDGEMENT

1. Heard ld. counsel Mr. T.S. Nanavati for the petitioners, ld. APP Mr. Desai for Respondent No.1 State

and ld. Counsel Mr. S.V. Raju for Respondent No.2-original complainant.

2. The petitioners-accused were convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, by the ld. Metropolitan Magistrate, Court No.2, Mirzapur, Ahmedabad vide judgment and order dated 27.7.2000 in Criminal Case (Summary Case) No. 3069/96. The said order of conviction and sentence was challenged by the petitioners accused before the ld. Addl. City Sessions Judge, Ahmedabad by filing Criminal Appeal No. 53/2000, who vide his judgment and order dated 27.2.2002 confirmed the order of conviction passed by the ld. Metropolitan Magistrate. The present Criminal Revision Application is preferred by the petitioners accused against the aforesaid judgments.

3. Before this Criminal Revision Application could be heard and decided, parties have settled the matter out of Court. Ld. counsel Mr. Raju for Respondent No.2-original complainant has tendered the copy of the terms of compromise arrived at between the complainant and accused and it is submitted that this revision application be heard and disposed of finally. Hence, with the consent of the parties, this revision application is taken up for final hearing.

4. Ld. counsel Mr. Nanavati has pointed out that basically the transaction was a commercial transaction and it was basically a civil dispute between the parties. It is also pointed out by ld. counsel Mr. Nanavati that Summary Suit was also filed by the original complainant being Summary Suit No. 5186/99 in the City Civil Court, Ahmedabad. Contentions of the suit are also read over to the Court by ld. counsel Mr. Nanavati. In response to the query raised by the Court, ld. counsel Mr. Raju for Respondent No.2- original complainant has fairly conceded that transaction between the parties is essentially of a nature which can be said to be a civil dispute and considering the nature of transaction only, complainant has settled the matter out of court by receiving some less amount than the actual amount claimed in the summary suit. Ld. counsel Mr. Raju has submitted that by recording his concession if this revision application is allowed, the complainant has no objection.

5. Ld. APP Mr. Desai has submitted that in view of the concession given by ld. counsel Mr. Raju for the original complainant and withdrawal of the civil suit on

account of compromise, appropriate orders may be passed.

6. Hence, considering the concession given by ld. counsel Mr. Raju for original complainant and without treating this judgment as precedent, this Criminal Revision Application is allowed. Both the impugned judgments and orders i.e. impugned judgment and order of conviction passed by the ld. Metropolitan Magistrate, Court No.2, Mirzapur, Ahmedabad vide judgment and order dated 27.7.2000 in Criminal Case (Summary Case) No. 3069/96, as well as impugned judgment and order passed by the ld. Addl. City Sessions Judge, Ahmedabad in Criminal Appeal No. 53/2000, on 27.2.2002 confirming the order of conviction passed by the ld. Metropolitan Magistrate, are hereby quashed and set aside. The petitioners- accu punishable under Section 138 of the Negotiable Instruments Act. Their bail bonds stand cancelled. Fine if paid, be refunded to the petitioners accused.

Rule is made absolute accordingly.
Direct Service is permitted.

22.3.2002 [C.K. BUCH, J]
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